

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b))

Description of Case

WPMB No. 664 of 2003, decided on 24.07.2003

A.F.R. (Approved for Reporting)

~~Not approved for reporting~~

Initials of Judge

Date 24.7.03

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Writ Petition No.664 of 2003 (M/B)

Veer Singh Petitioners
Vs.

State of Uttaranchal and
others Respondents

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Hon. P.C.Verma, A.C.J.

Hon. Rajesh Tandon, J.

The grievance raised in this writ petition relates to the withdrawal of administrative and financial powers of the Gaon Pradhan. The office of the Gram Pradhan is an elected office under the U.P.Panchayat Raj Act, 1947 and U.P. Panchayat Raj(Removal of Pradhans, Up-Pradhans, Members) Enquiry Rules, 1997.

The petitioner was the elected Pradhan of village Shahpur in accordance with the provisions of U.P. Panchayat Raj Act and rules framed thereunder. A complaint was received against the petitioner by the State Government. The State Government in exercise of the powers contained under section 95 of the U.P. Panchayat Raj Act, 1947 instituted an inquiry in the matter relating to Gaon Sabha of which the petitioner was Pradhan.

Section 95 (1) (g) of the U.P.Pancvhayat Raj Act provides for the removal of Pradhan and Up Pradhan on the ground mentioned therein and according to procedure prescribed therefor.

Seection 95(1)(g) reads as under:

“95. Inspection.-(1) The State Government may-

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(g) Remove a Pradhan, Up Pradhan or member of a Gram Panchayat or a joint Committee or Bhumi Prabandhak Samiti or a Panch, Sahayak Sarpanch or Sarpanch of a Nyaya Panchayat if he-”

- (i) absents himself without sufficient cause for moiré than three consecutive meetings or sittings,
- (ii) refuses to Act or becomes incapable of acting for any reason whatsoever or if he is accused of a charged for an offence involving moral turpitude,
- (iii)has abused his position as such or has persistently failed to perform the duties imposed by the Act or

- rules made there under or his continuance as such is not desirable in public interest, or
- (iii-a) has taken the benefit of reservation under sub-section(2) of Section 11-A or sub-section (5) of Section 12 as the case may be, on the basis of a false declaration subscribed by him stating that he is a member of the Scheduled Caste, the Scheduled Tribes or the Backward Classes, as the case may be.
 - (iv) being a Sahayak Sarpanch or a Sarpanch of the Nyaya Panchayat takes active part in politics, or
 - (v) suffers from any of the disqualifications mentioned in clauses (a) to (m) of Section 5-A:

Provided that where, in an enquiry held by such person and in such manner as may be prescribed, a Pradhan or up-Pradhan is *prima facie* found to have committed financial and other irregularities, such Pradhan or Up-Pradhan shall cease to exercise and perform the financial and administrative powers and functions, which shall until he is exonerated of the charges in the final enquiry, be exercised and performed by a Committee consisting of three members of Gram Panchayat appointed by the State Government.”

The inquiry was to be conducted in accordance with the rules framed in exercise of powers conferred by section 110 read with clause (g) of sub section (1) of section 95 of the U.P. Panchayat Raj Act, 1947 known as Uttar Pradesh Panchayat Raj (Removal of Pradhans, Up-pradhans and Members) Enquiry Rules, 1997. Rule 4 of the said rules was amended by Notification No. 2263/XXXIII-I-2001-565-2000, dt. 5.10.2001 w.e.f. 5.10.2001 and provides that State Government may on receipt of complaint or a report referred to in sub rule (3) or otherwise order the Enquiry Officer to conduct the inquiry.

Rule 3 and Rule 4 are reproduced below:

“3. Procedure relating to complaints-(1) Any person making a complaint against Pradhan or UP-Pradhan may send his complaint to the State Government or any officer empowered in this behalf by the State Government.

(2) Every complaint referred to in sub-rule (1) shall be accompanied by the complainant’s own affidavit in support thereof and also affidavits of all persons from whom he claims to have received information of facts relating to the accusation, verified before a notary together with all documents in his possession or power pertaining to the accusation.

(3) Every complaint and affidavit under this rule as well as any schedule or annexure thereto shall be verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings and affidavits respectively

(4) Not less than three copies of complaint as well as each of its annexure shall be submitted by the complainant.

(5) A complaint, which does not comply with any of the foregoing provisions of these rules, shall not be entertained.

(6) It shall not be necessary to follow the procedure laid down in the foregoing provisions of this rule if a complaint against a Pradhan or Up-Pradhan is made by a public servant.

4. Preliminary Enquiry.-(1) The State Government may, on the receipt of a complaint or report referred to in Rule 3, or otherwise order to the Enquiry Officer to conduct a preliminary enquiry with a view to finding out if there is a *prima facie case* for a formal enquiry in the matter.

(2) The Enquiry Officer shall conduct the preliminary enquiry as expeditiously as possible and submit his report to the State government within a fortnight of his having been so ordered.”

Under Rule 4 the enquiry is to be conducted by the Enquiry Officer. The Enquiry Officer is defined under clause (c) of Rule 2 of Uttar Pradesh Panchayat Raj (Removal of Pradhans, Up-pradhans and Members) Enquiry Rules, 1997 w.e.f. 5.10.200, which reads as under:

“Enquiry Officer” means the District Panchayat Raj Officer or any other district level officer, to be nominated by the District Magistrate.”

In the present case, the enquiry has been conducted by the Block Development Officer. Learned counsel for the petitioner submitted that since under Rule 4 the Block Development Officer was not competent to hold the preliminary inquiry as he is not a district level officer and he is only a block level officer, therefore, the entire proceedings is bad in law and is liable to be quashed.

We have heard Sri M.C.Bansal, learned counsel for the petitioner, learned standing counsel and Lok Pal Singh, learned counsel for the intervenor.

The apex Court in the case of Chandra Kishore Jha Vs. Mahavir Prasad and others (1999)8 SCC 266 observed as under:

It is well-settled salutary principle that if a statute provides for a thing to be done in a particular manner then it has to be done in that manner and in no other manner (See with advantage: Nazir Ahmad Vs. King Emperor, AIR 1936 PC 253 (II); Rao Shiv Bahadur Singh Vs. State of V.P.(AIR 1954 PV 322; 1954 SCR 1098; State of U.P. Vs. Singhara Singh (AIR 1964 SC 358:(1964) 1SCWR 57).

In the State of Uttar Pradesh Vs. Snghara Singh and others reported in AIR 1964 SC 358 (V 51 C 45), the apex Court has relied upon the English Case Law of *Taylor Vs. Taylor* and has observed as under:

“The rule adopted in *Taylor Vs. Taylor* (1878)1 Ch D 426 is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any manner than that which has been prescribed.”

The Hon’ble Supreme Court in the case of Dhanjaya Reddy Vs. State of Karnataka (2001)4 S.C.C. 9 took the same view that where law requires a thing to be done in a certain manner, it has to be done in that manner or not at all. The Court further observed that the power must be exercised in the manner provided by the statue.

Admittedly, in the present case the inquiry was held by the Block Development Officer on the basis of which the impugned order withdrawing the financial or administrative powers has been passed. There is nothing on record that the Block Development Officer was an Enquiry Officer as defined u/s 2 (c) of U.P. Panchayat Raj (Removal of Pradhans, Up-pradhans and Members) Enquiry Rules,1997. He was not even not a district level officer. He was simply a block level officer. Therefore, the impugned order is vitiated which can not be sustained in the eye of law. Accordingly, a writ of certiorari is issued to quash the impugned order dated 18.6.2003. The writ petition is allowed. No order as to costs.

Dt.24.07.2003

(P.C. Verma, A.C.J.) (Rajesh Tandon, J.)

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